

STATE OF MICHIGAN
COURT OF APPEALS

JOHN DOE, Individually and as Next Friend of
JANE DOE, a Minor,

UNPUBLISHED
September 17, 2009

Plaintiffs-Appellees,

v

JOHN DOE I, HENRY FORD HOSPITAL and
HENRY FORD HEALTH SYSTEM, INC.,

No. 285655
Wayne Circuit Court
LC No. 07-701308-NO

Defendants,

and

JOHN DOE II and SUPERIOR AMBULANCE
SERVICE,

Defendants-Appellants.

Before: O'Connell, P.J., and Talbot and Stephens, JJ.

STEPHENS, J. (*dissenting*)

I would affirm the trial court's denial of defendants' motion to file a notice of non-party fault under MCR 2.112(K)(3). As the majority has found, defendants could have ascertained that DeFillippo was not served in time to file a timely notice of non-party fault. The majority has nonetheless concluded that because there is no showing of prejudice, the notice should be allowed. The court rule has a mandatory timeline for filing the notice and affords an exception only when due diligence has been exercised. Therefore the trial judge did not err in his interpretation of the court rule or his denial of the opportunity to file the late notice.

/s/ Cynthia Diane Stephens